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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,995	03/10/2002	Michael J. Curry	1049.002US1	2530
23441 7590 11/28/2007 LAW OFFICES OF MICHAEL DRYJA 1474 N COOPER RD #105-248 GILBERT, AZ 85233			EXAMINER DINH, KHANH Q	
			ART UNIT 2151	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 09/683,995	Applicant(s) CURRY ET AL.	
	Examiner Khanh Dinh	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This is in response to the Amendment and Remarks filed on 9/13/2007. Claims 1-24 are presented for examination.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Budge et al., US pat. No.6,564,248.

As to claim 1, Budge discloses a system comprising:

a network and a first client (sub-system 2 of fig.1) having a first email messaging program (50 fig.1) installed thereon, a composing user (user) composing a message on the first email messaging program, the composing user recording media on the first email message program, the first email messaging program sending the message to a receiving user over the network (i.e., using 50 fig.1 to provide the creation of video email

messages and transferring of those email messages to a conventional email client, see abstract, figs. 1, 2B, 2C, col.3 line 17 to col.4 line 49).

a second client (receiving sub-system 4 of fig.1) having a second email messaging program (using same software program in fig.2B for receiving sub-system 4 of fig.1) installed thereon on which the receiving user receives the message over the network, the second email messaging program playing back the media upon the user viewing the message (i.e., playing back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54); wherein the first email messaging program sends the message and the media over the network by itself, without having to use any other email messaging program on the first client (video email messages are sent as video files or self contained executable files, see col.5 lines 5-58 and col.6 lines 20-54).

As to claim 2, Budge discloses a streaming media server, the first email messaging program uploading the media to the streaming media server upon the message being sent to the receiving user over the network, and the second email messaging program downloading the media from the streaming media server over the network upon the receiving user viewing the message (see fig.5, col.5 line 12 to col.6 line 54).

As to claims 3, 11, 14, Budge further discloses an email messaging program attaches the media as an attachment to the message upon the message being sent to the receiving user over the network, and the second email messaging program receives the

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media as the attachment to the message over the network (i.e., sending email with an attach executable video email player, see col.3 line 54 to col.4 line 49 and col.5 line 26 to col.6 line 54).

As to claims 4, Budge discloses at least one of: the Internet, an intranet, an extranet, a local-area network (LAN), a wide-area network (WAN), a wired network, a wireless network, and a telephony network (see col.3 lines 7-53).

As to claim 5, Budge discloses at least one of the first clients and the second client comprises: a desktop computer, a laptop computer, a cellular phone, a wireless phone, a set-top box, and a personal digital assistant (PDA) device (see col.3 line 17 to col.4 line 49).

As to claims 6 and 7, Budge discloses text and at least one of: audio, video, streaming audio and streaming video (see col.5 line 26 to col.6 line 54).

As to claim 8, Budge discloses a system comprising:

a networking mechanism communicatively coupling the system to a network (Internet, col.4 lines 5-29),

an email messaging program (50 fig.1) having at least a composing capability for a user (sending sub-system 2 of fig.1) to compose a message and record media associated with the message to send to another user over the network via the

networking mechanism (see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49 and col.5 lines 26-67),

wherein the user composes the message and records the media on the email messaging program (i.e., using 50 fig.1 to provide the creation of video email messages and transferring of those email messages to a conventional email client, see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49), wherein the first email messaging program sends the message and the media over the network by itself, without having to use any other email messaging program on the first client (video email messages are sent as video files or self contained executable files, see col.5 lines 5-58 and col.6 lines 20-54).

As to claim 9, Budge discloses an operating system on which the email messaging program runs (see col.4 line 31 to col.5 line 58 and col.6 lines 1-54).

As to claim 10, Budge discloses capability uploads the media to a streaming media server communicatively coupled to the network over the network via the networking mechanism upon the message being sent to the other user over the network via the networking mechanism (see figs.4, 5, col.5 line 12 to col.6 line 54).

As to claims 12 and 13, Budge discloses a playback capability for the user to view messages received from other users over the network via the networking mechanism and play back received media associated with the messages received and downloading

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the media associated with one of the messages received from the streaming media server over the network via the networking mechanism upon the user viewing the one of the messages received (i.e., playing back the audio and video portions of the received video email, see figs.4, 5, col.3 line 17 to col.4 line 49).

As to claim 15, Budge discloses at least one of: an analog modem, an Integrated Services Digital Network (ISDN) adapter, a network adapter card, a network adapter chipset, a cable modem, a Digital Subscriber Loop (DSL) modem, a digital modem, and a wireless modem (see col.3 line 6 to col.4 line 49).

Claims 16 and 17 are rejected for the same reasons set forth in claims 6 and 7 respectively.

As to claim 18, Budge discloses a method comprising:

saving a message entered by a user by an email messaging program (see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49),

recording media associated with the message by the email messaging program, uploading the media to a streaming media server over a network by the email messaging program (50 fig.1) and sending the message over the network by the email messaging program (see figs.1, 3, col.4 line 50 to col.6 line 54),

wherein the user composes the message and records the media on the email messaging program (i.e., using 50 fig.1 to provide the creation of video email

messages and transferring of those email messages to a conventional email client, see abstract, figs. 1, 2B, 2C, col. 3 line 17 to col. 4 line 49), wherein the first email messaging program sends the message and the media over the network by itself, without having to use any other email messaging program on the first client (video email messages are sent as video files or self contained executable files, see col. 5 lines 5-58 and col. 6 lines 20-54).

As to claim 19, Budge discloses receiving a second message over the network by the email messaging program in response to a user requesting the email messaging program to display the second message, displaying the second message by the email messaging program, downloading second media associated with the message from the streaming media server over the network by the email messaging program and playing back the second media by the email messaging program (i.e., playing back the audio and video portions of the received video email, see figs. 4, 5, col. 3 line 17 to col. 4 line 49).

Claim 20 is rejected for the same reasons set forth in claim 18. As to the added limitation, Budge discloses sending the media as an attachment to the message (i.e., sending email with an attach executable video email player, see col. 3 line 54 to col. 4 line 49 and col. 5 line 26 to col. 6 line 54).

As to claim 21, Budge discloses receiving a second message over the network by the email messaging program; in response to a user requesting the email messaging



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program to display the second message, displaying the second message by the email messaging program, downloading second media associated with the message from the streaming media server over the network by the email messaging program and playing back the second media by the email messaging program (i.e., playing back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54).

As to claim 22, Budge discloses a computer-readable medium having instructions stored thereon for an email messaging program of a system, the email messaging program comprising:

means for composing a first message by a first user (1 fig.1) and for recording first media associated with the first message to send to a second user (4 fig.1) over a network (see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49),

means for viewing a second message received from the second user over the network by the first user, and for playing back second media associated with the second message (i.e., playing back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54),

wherein the user composes the message and records the media on the email messaging program (i.e., using 50 fig.1 to provide the creation of video email messages and transferring of those email messages to a conventional email client, see abstract, figs.1, 2B, 2C, col.3 line 17 to col.4 line 49),

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wherein the first email messaging program sends the message and the media over the network by itself, without having to use any other email messaging program on the first client (video email messages are sent as video files or self contained executable files, see col.5 lines 5-58 and col.6 lines 20-54).

As to claim 23, Budge discloses uploading the first media to a streaming media server communicatively coupled to the network over the network upon the first message being sent to

the second user over the network, and the means for viewing and for playing back downloads the second media from the streaming media server over the network upon the first user viewing the second message (i.e., playing back the audio and video portions of the received video email, see figs.5, 6, col.3 line 17 to col.4 line 49, col.5 line 12 to col.6 line 54).

Claim 24 is rejected for the same reasons set forth in claim 20.

### ***Response to Arguments***

4. Applicant's arguments filed on 9/13/2007 have been fully considered but they are not persuasive.

- Applicant asserts that the Budge reference does not disclose the first email messaging program sends the message and the media over the

network by itself, without having to use any other email messaging program on the first client.

*Examiner respectfully disagrees. Budge explicitly discloses wherein the first email messaging program sends the message and the media over the network by itself, without having to use any other email messaging program on the first client (video email messages are sent as video files or self contained executable files, see col.5 lines 5-58 and col.6 lines 20-54) as rejected above.*

*As a result, cited prior art does disclose an email messaging system, as broadly claimed by the Applicants. Applicants clearly have still failed to identify specific claim limitations that would define a clearly patentable distinction over prior art.*

### **Conclusion**

5. Claims 1-24 are rejected.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh Dinh whose telephone number is (571) 272-3936. The examiner can normally be reached on Monday through Friday from 8:00 A.m. to 5:00 P.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung, can be reached on (571) 272-3939. The fax phone number for this group is (571) 273-8300.

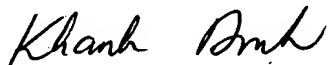
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

***Any response to this action should be mailed to:***

*Commissioner for patents*

*P O Box 1450*

*Alexandria, VA 22313-1450*

  
KHANH DINH  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 2100